

The European Union's Reform Process: The Lisbon Treaty

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Summary

The Lisbon Treaty, the latest institutional reform treaty of the European Union (EU), went into effect on December 1, 2009. The document was signed by the heads of state or government of the 27 EU member countries in December 2007. The process of completing ratification by each individual member country lasted nearly two years, concluding with ratification by the Czech Republic on November 3, 2009. The Lisbon Treaty reforms the EU's governing institutions and decision-making process to enable the EU to operate more effectively. The treaty grew out of the proposed "constitutional treaty" that foundered after French and Dutch voters rejected it in referendums in 2005.

The Lisbon Treaty seeks to give the EU a stronger and more coherent voice with the creation of a new position, President of the European Council. The first holder of this office is former Belgian Prime Minister Herman Van Rompuy. He chairs the activities of the 27 EU heads of state or government, working to facilitate consensus and ensure policy continuity, and acting as the group's spokesman. Additionally, the Lisbon Treaty seeks to increase the weight and visibility of the EU on the world stage by creating the new position of High Representative of the Union for Foreign Affairs and Security Policy. Catherine Ashton (from the United Kingdom), formerly European Commissioner for Trade, serves in this position. She will be supported by a newly created EU diplomatic corps, the European External Action Service.

The treaty also makes changes to the EU's internal decision-making mechanisms. These changes have been designed to streamline the process and make it less susceptible to gridlock or blockage. Additional reforms attempt to address concerns about democratic accountability and transparency in EU policy-making by granting a greater role to the directly elected European Parliament, national parliaments, and citizens' initiatives.

Experts assert that the Lisbon Treaty could have positive implications for U.S.-EU relations. Some observers believe that it could eventually allow the EU to take on a more active and effective role as a U.S. partner in tackling global challenges. The adoption of the treaty could also help make the EU more amenable to future enlargement, including to the Balkans and perhaps Turkey, which the United States supports. On the other hand, some observers doubt how much of an impact the Lisbon Treaty will have, and some skeptics maintain that a stronger EU poses a potentially detrimental rival to NATO and the United States.

This report provides information on the Lisbon Treaty and possible U.S.-EU implications that may be of interest to the 112th Congress. Also see CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick and Derek E. Mix.

Contents

Background	1
The Constitutional Treaty	2
The Lisbon Treaty	2
Key Reforms	3
Implications for the United States	5

Contacts

Author Information.....	6
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Background

The European Union (EU) is an economic and political partnership that is unique in history. Built upon a series of treaties and embodied in a set of governing institutions, the EU represents a voluntary pooling of sovereignty among 27 countries.¹ These countries have committed to a process of integration by harmonizing laws and adopting common policies on an extensive range of issues. Notable areas of shared sovereignty include a customs union; a common trade policy; a single market in which goods, people, and capital move freely; a common currency (the euro) that is used by 17 member states;² and many aspects of social and environmental policy. EU member states have also taken significant steps in the development of a Common Foreign and Security Policy (CFSP) and closer police and judicial cooperation.³

A group of leaders from six countries—Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands—began the process of integration after World War II in an effort to ensure peace and promote economic prosperity in Europe. As cooperation between these countries deepened, new members were added to the group: Denmark, Ireland, and the United Kingdom joined in 1973; Greece in 1981; Portugal and Spain in 1986; and Austria, Finland, and Sweden in 1995. In 2004, eight formerly communist countries of Central and Eastern Europe—the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia—plus Cyprus and Malta joined the EU. Bulgaria and Romania joined in 2007, bringing the number of member countries to 27.

With enlargement and a progressively wider policy scope came the need to reform the EU's institutional arrangements and procedures to reflect the heightened complexity of decision-

EU Institutions

The **European Commission** is essentially the EU's executive and has the right of legislative initiative in most instances. It ensures that the provisions of EU Treaties are carried out by the member states. The 27 Commissioners (one from each member country), including a President, are appointed by the member states for five-year terms. Each Commissioner holds a distinct portfolio (e.g., agriculture). The President of the Commission sets its policy priorities, organizes its work, and represents the Commission internationally.

The **Council of the European Union (Council of Ministers)** is comprised of ministers from the national governments. As the main decision-making body, it enacts legislation based on proposals put forward by the Commission. Different ministers participate depending on the subject under consideration (e.g., economics ministers could convene to discuss unemployment policy). The presidency of the Council rotates among the member states every six months.

The **European Parliament** consists of 736 members. Since 1979, they have been directly elected in each member state for five-year terms. The Parliament cannot enact laws like national parliaments, but it shares "co-decision" power in many areas with the Council of Ministers, can amend or reject the EU's budget, and must approve each new European Commission.

The **European Council** brings together the Heads of State or Government of the member states and the President of the Commission at least twice every six months. It acts principally as a guide and driving force for EU policy.

The **Court of Justice** interprets EU law and its rulings are binding; a **Court of Auditors** monitors the Union's financial management. Additionally, a number of advisory bodies represent economic, social, and regional interests.

¹ The member countries of the EU are Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

² The members of the Eurozone are Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia, and Spain.

³ See CRS Report RS21372, *The European Union: Questions and Answers*, by Kristin Archick and Derek E. Mix.

making. The landmark Maastricht Treaty of 1993 set out the blueprint for an EU of 12 members and the Treaty of Amsterdam (1999) refined arrangements for a Union at 15. The Treaty of Nice (2003) further amended the workings of the EU to prepare for eastward enlargement.⁴ The Nice Treaty was also supposed to streamline EU decision-making to allow an enlarged Union to function more effectively. However, critics charged that Nice set up an even more complex and less efficient decision-making process that was too prone to confusion and gridlock. Some also lamented that Nice did not provide sufficient mechanisms and arrangements that would allow the EU to assert a stronger global role. In addition, Nice did little to stem charges that EU institutions and decision-making lack transparency and democratic accountability and are unintelligible to the average European citizen.

As the scope of EU policy continues to grow, future enlargement beyond 27 members is likely: Iceland, Turkey, and the countries of the Western Balkans are in line for admission. In this context, as well as in the context of perceived institutional shortcomings, many leaders and analysts advocated the adoption of a new EU treaty that enacts what they have considered to be necessary internal reforms. The Lisbon Treaty is the result of these efforts.

The Constitutional Treaty

The Lisbon Treaty grew out of the so-called constitutional treaty, an earlier failed attempt to merge the EU's existing treaties into a single document while enacting institutional reforms. Already in December 2001—before ratification of the Treaty of Nice and the EU's eastward enlargement—EU leaders announced they would convene a Convention on the Future of Europe to examine the EU's institutional arrangements and make proposals that would increase democratic legitimacy and encourage the development of the EU as a stronger global actor.

The Convention began work in March 2002 under the leadership of former French President Valéry Giscard d'Estaing and finalized a 240-page "Draft Treaty establishing a Constitution for Europe" in July 2003.⁵ After a period of discussion and negotiation among the member state governments, EU leaders signed the treaty in October 2004 and set November 2006 as the target date for its adoption.

However, in order to come into effect the treaty had to be ratified individually by all 27 member states through either parliamentary approval or public referendums. In May 2005, French voters rejected the document in a national referendum, and in June 2005 Dutch voters followed suit. Although a number of EU members had already approved the treaty by this point, these setbacks effectively ended its prospects. In both France and the Netherlands, some arguments against the constitutional treaty reflected concerns that it would entrench liberal economic ideas that could undermine social protections. In addition, many French and Dutch voters viewed a "no" vote as a way to express dissatisfaction with their unpopular national governments, EU bureaucracy, and Turkey's prospective EU membership.

The Lisbon Treaty

In January 2007, as Germany took over the six-month EU presidency, Europe remained in what some analysts called a "period of reflection"—a condition of stasis born in the uncertainty that followed the rejection of the constitutional treaty. German Chancellor Angela Merkel made

⁴ For summaries of these three treaties, see http://europa.eu/legislation_summaries/institutional_affairs/treaties/index_en.htm.

⁵ The document can be downloaded at <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>.

reviving the stalled reform process one of her key priorities, seeking a new treaty deal that would institute crucial reforms. Analysts say that Merkel received a key assist with the May 2007 election of Nicolas Sarkozy as President of France: Sarkozy shared Merkel's goal of reviving the constitutional treaty in some form, at least in part to restore France's role as a leader in Europe following its 2005 "no" vote.

Germany and others that had ratified the constitutional treaty wanted to preserve as much of the original document as possible. However, some changes were considered necessary in order to address concerns raised by French and Dutch voters, as well as to satisfy countries such as the UK, which sought to protect its national sovereignty in some areas, and Poland, which wanted more voting weight in the Council of Ministers.

After contentious negotiations at the June 2007 EU Summit, EU leaders announced the outlines of a new "reform treaty" that would amend, rather than replace, the existing EU treaties. EU leaders also dropped the term "constitution," given that it had become negatively associated in some countries with creating an EU "superstate." After working out the text at a July 2007 Intergovernmental Conference, EU leaders met in Lisbon and signed the new treaty in December 2007.⁶ Analysts assessed that over 90% of the substance of the constitutional treaty had been preserved in the Lisbon Treaty.

As an amendment to existing treaties, EU leaders sought to present the new document as one that would be ratified by parliaments, thereby avoiding the risks of public referendums. However, Ireland is required by its national law to hold a public vote on any major change to the EU rules. EU officials initially hoped that the Lisbon Treaty would be ratified by all 27 member states and enter into force before the June 2009 European Parliament elections, but rejection of the treaty in Ireland's June 2008 referendum threw the timetable for adoption into disarray. Influenced by an active "no" campaign, Irish voters feared the treaty would hurt their economy, strip their sovereignty on tax policy and sensitive issues such as abortion, and impinge on their stance of neutrality in security and defense issues. Irish leaders agreed to hold a second referendum, and following the negotiation of EU concessions and "guarantees" in areas of concern to Ireland, as well as a stronger "yes" campaign that sought to convince the public of the treaty's benefits, Irish voters decisively approved the treaty on October 2, 2009. The Czech Republic completed the final national ratification on November 3, allowing the treaty to come into effect on December 1, 2009.

Key Reforms

Major changes under the Lisbon Treaty aim to achieve three broad goals:

(1) A stronger and more coherent EU voice. The Lisbon Treaty creates the new position of President of the European Council to chair the meetings of the 27 EU heads of state or government. The President of the European Council is elected by the member states for a term of two and one-half years, renewable once.

Some had envisioned this position as a driver of EU policy, a heavyweight presidential figure who would play a highly visible international role. In choosing former Belgian Prime Minister Herman Van Rompuy, however, EU leaders have initially defined this position as more of a manager who will coordinate the activities of the Council, help ensure policy continuity, and work to facilitate consensus. Van Rompuy's experience in negotiating and holding together coalitions in the often fractious arena of Belgian national politics was considered by many as an asset that fit well with the job description. According to some analysts, this choice confirms that

⁶ For a summary or full text of the treaty, see http://europa.eu/lisbon_treaty/full_text/index_en.htm.

even as its members pursue a stronger and more integrated EU, considerations of national influence and prestige remain key: leaders from both large and small countries sought to avoid establishing a powerful President who might overshadow or marginalize their own roles.

The Lisbon Treaty also creates another important new position to boost the EU's international visibility: High Representative of the Union for Foreign Affairs and Security Policy. The position was originally called the EU "foreign minister" in the constitutional treaty, but this term was dropped due to British objections. Nevertheless, this individual is the EU's chief diplomat, exercising the former responsibilities of the Council of Ministers' High Representative for the Common Foreign and Security Policy (formerly Javier Solana) and the Commissioner for External Relations (formerly Benita Ferrero-Waldner), who oversaw the EU's foreign aid and development policies. The new High Representative is therefore an agent of the Council of Ministers (representing the member states) and holds the title of a Vice-President of the European Commission, an institutional adjustment intended to impart greater coherence by marrying the EU's political and economic clout in one powerful new office. The High Representative is to have extensive staff support with the creation of a European External Action Service, in effect a new EU diplomatic corps.

The desired nature of the "foreign minister" produced a debate similar to that over the President—whether the position should act as a strong, independent-minded leader who both drives and oversees EU foreign policy, or as more of a facilitator who advances the members' consensus. At this time, the answer remains inconclusive. After some EU officials unsuccessfully attempted to promote former UK Foreign Secretary David Miliband for the position, EU leaders ultimately agreed on Baroness Catherine Ashton (also of the United Kingdom), formerly European Commissioner for Trade. Some observers were surprised at this choice, given Ashton's relative lack of foreign policy experience. Others note, however, that she has a considerable opportunity to define the nature of the position through her actions and initiatives. Some analysts assert that with its extensive political and developmental aid resources and potential to wield considerable influence, this strengthened High Representative post could be the more significant of the positions created by the Lisbon Treaty.

The Lisbon Treaty also promotes steps toward building a stronger common EU defense policy. As proposed in the former constitutional treaty, the Lisbon Treaty asserts that the EU shall seek "the progressive framing of a common Union defense policy," which "will lead to a common defense." It establishes a "mutual assistance clause" permitting a member state that is the victim of armed aggression to ask for military assistance from the other members. Member states may also engage in "structured cooperation," which would allow a smaller group of members to cooperate more closely on military issues.

(2) More streamlined decision-making. After a contentious debate with Poland, EU leaders agreed on a simplified formula (ultimately similar to that proposed in the constitutional treaty) for the Council of Ministers' Qualified Majority Voting (QMV) system. Decisions made by QMV would pass if supported by 55% of member states, representing 65% of the EU's population. As a concession to Poland, this new "double majority" system is to be introduced in 2014, gradually phased in over three years, and not fully implemented until 2017.

The use of QMV is also expanded to policy areas previously subject to unanimity, especially in matters related to police and judicial cooperation (the UK, however, has been granted an opt-out in this area). Unanimity will continue to be required (any member state may veto a common policy) in sensitive areas such as taxation and most aspects of foreign and defense policy.

The Lisbon Treaty had initially planned to slim down the size of the European Commission starting in 2014. To help decrease gridlock, EU leaders had proposed reducing the number of

Commissioners from one per member state to correspond to two-thirds of the number of member states. However, concessions related to Ireland's attempt to ratify the treaty shelved this idea, and the Commission will remain at one Commissioner per member state.

(3) Increased transparency and democratic accountability. In many policy areas, the directly elected European Parliament holds the right of “co-decision” with the Council of Ministers: both institutions must approve a piece of legislation for it to become law. The Lisbon Treaty extends the European Parliament's “co-decision” powers to include many additional policy areas, including agriculture, trade, and “home affairs” issues.

The treaty also gives national parliaments a greater role in EU policy-making and more authority to challenge draft EU legislation. The treaty introduces the concept of citizens' initiatives, whereby European citizens may petition the European Commission with legislative suggestions.

Additionally, the Lisbon Treaty makes the Charter of Fundamental Rights—a declaration of citizens' basic political, economic, and social rights—legally binding for all EU institutions and member states. Poland, the Czech Republic, and the United Kingdom negotiated “opt-outs” from applying the Charter.

Implications for the United States

Many experts assert that the Lisbon Treaty could have positive implications for U.S.-EU relations. After the appointment of Van Rompuy and Ashton, a White House statement asserted that “the United States has no stronger partner than Europe in advancing security and prosperity around the world. These two new positions, and related changes to take effect on December 1 as a result of the implementation of the Lisbon Treaty, will strengthen the EU and enable it to be an even stronger partner to the United States.”⁷

If the EU is able to increasingly “speak with one voice” on global issues—a stronger, more consistent, and more coherent voice—proponents of close U.S.-EU ties argue that the EU could take a more active and assertive international role and be a more credible and effective partner for the United States in tackling common challenges. The Lisbon Treaty is not a revolutionary overhaul of the way the EU works, but the changes it makes may allow the EU to achieve consensus more easily, make policy decisions more quickly, and project its weight and influence more effectively. Supporters of the Lisbon Treaty also note that efforts to encourage a common EU defense policy and the proposal for “structured cooperation” seek to improve European defense capabilities. A more militarily capable Europe, they argue, could shoulder a greater degree of the security burden with the United States. In addition, some analysts assert that the Lisbon Treaty may help lead to the formation of stronger EU-wide policies in policing and judicial issues, which could further enhance transatlantic cooperation in matters of homeland security.

Analysts assert that the treaty could remove some obstacles to further EU enlargement to the Balkans and perhaps eventually Turkey, which the United States supports. European leaders had previously asserted that the streamlining reforms of the treaty could make the political atmosphere more amenable to additional enlargement, and some had called for a freeze on enlargement until the treaty was passed.

⁷ The White House, Office of the Press Secretary, *Statement by the Press Secretary on the Election of a New European Council President and High Representative*, November 19, 2009, <http://www.whitehouse.gov/the-press-office/statement-press-secretary-election-a-new-european-council-president-and-high-repres>.

Critics, on the other hand, contend that the Lisbon Treaty will do little to simplify the EU, and assert that many difficult issues that are often the source of gridlock—such as foreign policy and taxation—will remain subject to national vetoes. Some question whether the new positions created by the treaty will resonate in the United States. They wonder, for example, how much of a difference U.S. officials might discern between the new “foreign minister” and the previous position that was held by Javier Solana. Some skeptics of the EU in the United States contend that a larger and potentially more united EU may seek to rival the United States and could sometimes be an opponent, rather than a partner, in a variety of policy areas. They maintain that a more unified EU would likely lessen Washington’s leverage on individual members and could complicate U.S. efforts to rally support for its initiatives in institutions such as the United Nations or NATO. These skeptics remain concerned that parts of the Lisbon Treaty promoting greater EU defense coordination could lead to the eventual development of EU military structures that would duplicate those of NATO and weaken the transatlantic link.

U.S.-EU trade relations could potentially be affected by the new treaty. The European Commission maintains its role in formulating the EU’s external trade policy and negotiating trade agreements, and the Council of Ministers must still approve or reject trade agreements negotiated by the Commission. However, it is significant that the European Parliament gains “co-decision” powers with the Council in trade matters, and now acts as a “co-legislator” with an enhanced and more formal role in these areas.

This change reflects the fact that the overall institutional power and responsibilities of the European Parliament have been substantially increased by the Lisbon Treaty. Beyond trade, the European Parliament must now approve almost all international agreements negotiated by the European Commission. This power came into sharper focus in February 2010 when the Parliament rejected the U.S.-EU SWIFT agreement on tracking terrorist financing due to data privacy concerns, before approving an amended deal in July 2010. The European Parliament has long sought to strengthen interparliamentary ties with the U.S. Congress, and its enhanced role may further prompt those who argue for deepening the relationship between the two institutions. The Transatlantic Legislators’ Dialogue (TLD) is the formal mechanism for engagement and exchange between the U.S. House of Representatives and the European Parliament.

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